

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1575 of 1999

in

SPECIAL CIVIL APPLICATION No 3818 of 1999

For Approval and Signature:

Hon'ble Actg. CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BHARATIYA KARMACHARI SANGH

Versus

ONGC LTD.

Appearance:

MR TR MISHRA for Appellants

Mr Kartikeya Thaker for M/S TRIVEDI & GUPTA for
Respondents

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

Date of decision: 27/12/1999

ORAL JUDGEMENT (Per Thakker, Actg.C.J.)

Admitted. Mr Kartikeya Thaker for M/s. Trivedi & Gupta, learned Advocate appears and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against a part of the order by which the appellants herein are aggrieved.

2. Bharatiya Karmachari Sangh has filed Special Civil Application No.3818 of 1999 for an appropriate writ, direction or order in terms of para 12, which read as under:

"12. The petitioner-Union therefore prays that:

(A) Be pleased to issue a writ of mandamus as any other appropriate writ or order or direction, in the like nature requiring the respondent No.1 to absorb the petitioner-Union members in its employment as its direct employees from the date of their engagement through contractor:

(B) Pending hearing and final disposal of this petition, be pleased to direct the respondent No.1,4,5 and 6 are not to terminate the services of the petitioner-Union members shown as Annexure-A and in case the respondent No.5 and 6 contractor are changed be further pleased to direct the respondent No.1 Corporation to ensure the constitution of petitioner-Union member shown at Annexure in service even if the contractor are changed;

Grant such other and further relief/that be deemed fit and proper in the facts and circumstances of the case in the interest of justice"

3. The learned Single Judge, after hearing the parties, partly allowed the petition by which certain persons were protected. The present appellants, however,

could not get the said protection in view of the fact that in the opinion of the learned Single Judge, the case of the present appellants could not be said to be covered and they could not invoke the order which was in favour of other employees. That part of the order is challenged by the appellant in the present appeal.

4. We have heard the learned counsel for the parties. Our attention was also invited to a decision rendered by a Division Bench of this Court in a similar case (though according to the learned counsel for the respondents, it was not a similar case), being LPA No.1414 of 1996 dated March 12, 1997, to which one of us was a party (C K Thakker, J. as he then was).

5. In the facts and circumstances of the case and without expressing any opinion on merits of the matter one way or the other, in our view, interest of justice would be met if the present LPA is partly allowed by extending the protection to the appellants which was given by the learned Single Judge to other employees. While granting relief in favour of other employees, the learned Single Judge, in paras 4 and 5 observed as under:

"4(A) The petitioners shall within a period of two weeks from today, approach the conciliation officer in respect of their demand raised in the present petition.

(B) The Conciliation Officer shall after hearing the respective parties and considering the rival contentions and objections, submit its report to the appropriate Government within a period of six weeks from the date of receipt of the complaint from the concerned petitioners.

(C) In the event the Conciliation Officer draws a Failure Report the appropriate Government shall within a period of four weeks therefrom take a decision either to make a Reference or to refuse to make such reference. The status quo ordered by this Court in respect of the petitioners Nos. 1 to 86 and 13 to 17 shall continue to operate till the appropriate Government takes its decision on the Failure Report submitted by the Conciliation Officer and communicates the same to the petitioners and for a further period of 15 days thereafter.

(D) It is clarified that the concerned contractor shall be at liberty to take disciplinary action against any of these petitioners, if called for.

(E) It is further clarified that it shall be the sole discretion of the appropriate authority and/or the Labour court or the Industrial Tribunal, as the case may be to continue or not to continue the order of status quo made by this Court and continued under this order.

(F) In the event the contract with either of the contractors respondents nos. 3 to 5 comes to an end or is terminated for any other reason, it shall be open for the Corporation to award fresh contract and shall continue the present petitioners nos. 1 to 6 and 13 to 17 so long as the status quo ordered by this Court remains operative.

5. In view of the above directions no further order is required to be made on this petition. Subject to the above direction, the ad-interim order made on 14th May, 1999 is vacated."

6. In these facts and circumstances, all conditions imposed by the learned Single Judge on other employees would also apply mutatis mutandis to the present appellants. The appeal is accordingly partly allowed to the aforesaid extent. In the facts and circumstances of the case, no order as to costs.

We may state that we have not expressed any opinion on merits of the matter and as and when the matter will be taken up by the appropriate authorities, it will decide the matter strictly on its own merits.

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msh.